

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

United States of America,)	
)	C.R. No. 2:99-357
)	
v.)	
)	ORDER AND OPINION
Ezekiel C. Cross Jr.)	
)	
Defendant.)	
)	

This matter is before the court pursuant to defendant's second Motion for Modification of Sentence. This motion was filed with this court on June 21, 2005. Defendant's first motion for modification was filed on February 14, 2005. This court denied that motion on April 28, 2005. Both the first motion and the motion now before the court seek a reduction under 18 U.S.C. § 3582(c)(2), pursuant to United States v. Booker, 125 S. Ct. 738 (2005). Section 3582(c)(2) permits modification of a sentence in the case of a "defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." The Sentencing Commission has not lowered defendant's sentencing range, nor does Booker alter the relevant range. See United States v. Moreno, 421 F.3d 1217, 1220 (11th Cir. 2005) ("Booker is a Supreme Court decision, not a retroactively applicable guideline amendment by the Sentencing Commission. Therefore, Booker is inapplicable to § 3582(c)(2) motions.").

It is therefore **ORDERED** that defendant's motion for modification of sentence is **DENIED**.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

November 21, 2005
Charleston, South Carolina